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2011 Feb-16 AM 11:02
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA JASPER DIVISION

SHIRLEY N. TAYLOR,	**)**	
	)	
Plaintiff,	**)**	
	)	
v.	**)**	**Case __________________**
	)	
ALLY FINANCIAL, INC.,	**)**	
Formerly known as	**)**	
GENERAL MOTORS ACCEPTANCE	**)**	
CORPORATION; SYNERGETIC	**)**	
COMMUNICATION, INC.; TATE &	**)**	
KIRLIN ASSOCIATES, INC.; and	**)**	
RIVERCHASE KIA,	**)**	
Defendants.	**)**	

COMPLAINT

COMES NOW the Plaintiff, Shirley N. Taylor ("Plaintiff"), and for her Complaint against Defendants Ally Financial, Inc., formerly known as General Motors Acceptance Corporation ("GMAC"), Synergetic Communication, Inc. ("Syncom"), Tate & Kirlin Associates, Inc. ("TK"), and Riverchase Kia ("RivKia"), state as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is an adult resident of Fayette County, Alabama.

2. Defendants, with the exception of RivKia, are foreign corporations who are subject to in personam jurisdiction in this Court. RivKia is a domestic corporation.

3. Venue is proper, in that a substantial portion of the acts or omissions giving rise to this action arose in Fayette County, Alabama.

FACTUAL ALLEGATIONS

4. On March 30, 2005, Plaintiff entered into a 48-month lease agreement with Tuscaloosa Chevrolet for the lease of a 2005 Chevrolet Cobalt. Tuscaloosa Chevrolet assigned or otherwise transferred the lease to GMAC. GMAC assigned her lease an account number, which was XXX-XXXX-X0256. Plaintiff made her monthly payments under the lease as provided in the Contract.

5. In 2009, after the conclusion of the lease, Plaintiff elected to purchase the Cobalt through a trade-in, which she handled in connection with her purchase of a new Kia at RivKia. RivKia contacted GMAC and determined the amount owed by Plaintiff to purchase the Cobalt off of lease, which was approximately $5,000. RivKia credited Plaintiff only $2,000 for the trade-in value of the Cobalt, thus leaving Plaintiff "upside down" in the Cobalt by $3,000. Plaintiff rolled the deficiency into her car loan on the new Kia. RivKia took possession of the Cobalt, and then presumably obtained the title to the Cobalt free and clear from GMAC. Plaintiff then left RivKia with her new Kia vehicle.

6. Several months after the Kia transaction, Plaintiff began receiving phone calls and collection letters from GMAC concerning an alleged deficiency of $5,156.80 owed on the Cobalt. With each collection call, Plaintiff explained that the debt was not owed because she had purchased and paid off the Cobalt in her trade-in on her new Kia. The calls nevertheless continued.

7. As time passed, Plaintiff began being bombarded with collection calls, sometimes receiving multiple calls each day. After a while, Plaintiff began receiving calls and letters from Syncom and later T&K. Plaintiff told the callers on more than one occasion that they would need to speak with her attorney. Plaintiff explained in every one of these calls that the debt was not legitimate and that the calls must stop immediately. In at least several of these calls, a representative of Syncom then told Plaintiff that she would need an attorney because this had become "a federal matter" due to her nonpayment of the alleged debt. Later, she continued to explain to T&K that the debt was not legitimate, but Defendants kept calling her.

8. Despite her best efforts to explain the illegitimacy of the debt, Defendants have persisted in harassing and hounding Plaintiff. Plaintiff has continued to receive dozens of calls from Defendants, sometimes receiving them while she is at work. Defendants have also engaged in adverse credit

reporting against Plaintiff concerning the alleged debt which is not owed. Specifically, Plaintiff discovered that her Equifax credit report contained an adverse entry from GMAC concerning the lease and the alleged debt still owing on the lease. Plaintiff disputed that credit reporting by submitting a dispute to Equifax on January 20, 2011, and in that dispute stated the basis for same as the payoff of the vehicle off of lease. Subsequently, on February 9, 2011, Plaintiff received notification from Equifax that GMAC confirmed the adverse credit reporting.

9. The unjustified collection efforts of Defendants have upset Plaintiff greatly, and they continue to cause the Plaintiff distress. Plaintiff is a widow and commutes from her home in Berry, Alabama to Birmingham for work on a daily basis. The continued calls from Defendants, often on her cell phone, have caused her to suffer sleeplessness, loss of appetite, upset, and other physical manifestations of emotional distress.

COUNT ONE – INVASION OF PRIVACY

10. Plaintiff realleges and adopts by reference all prior allegations of the Complaint, as if set forth fully herein.

11. Plaintiff had the right to be free from unjustified and unwarranted interference with her privacy and seclusion. Defendants had no

basis for attempting to collect a debt which was not legitimate and was not owed.

12. Defendants (excepting RivKia) invaded the privacy rights of Plaintiff by attempting to collect the alleged debt which was not legitimate and not owed.

13. As a proximate result of said Defendants' actions, Plaintiff has suffered emotional distress, worry, and suffered such other damages as may be proven.

14. Said Defendants' actions were malicious, reckless, and lacking any reasonable basis whatsoever, thus warranting the imposition of punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendants (excepting RivKia) in such amount of compensatory and punitive damages as may be awarded by the trier of fact.

COUNT TWO – OUTRAGE

15. Plaintiff realleges and adopts by reference all prior allegations of the Complaint, as if set forth fully herein.

16. Defendants (excepting RivKia) directed multiple baseless collection efforts toward Plaintiff, seeking to collect a debt which she never owed. When Plaintiff explained the true facts, said Defendants would not

listen, but have instead harassed Plaintiff with hundreds of phone calls, letters, and derogatory credit reporting. Said Defendants' conduct is so egregious, extreme and outrageous as to be intolerable in any civilized society.

17. As a proximate result of said Defendants' conduct, Plaintiff has suffered severe emotional distress, worry, and suffered such other damages as may be proven.

18. Said Defendants' actions were malicious, reckless, and lacking any reasonable basis whatsoever, thus warranting the imposition of punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendants (excepting RivKia) in such amount of compensatory and punitive damages as may be awarded by the trier of fact.

COUNT THREE – WANTONNESS

19. Plaintiff realleges and adopts by reference all prior allegations of the Complaint, as if set forth fully herein.

20. Defendants (excepting RivKia) directed multiple baseless collection efforts toward Plaintiff, seeking to collect a debt which she never owed. When Plaintiff explained the true facts, said Defendants would not listen, but have instead harassed Plaintiff with hundreds of phone calls,

letters, and derogatory credit reporting. In so doing, said Defendants acted in wanton and reckless disregard of the rights of Plaintiff.

21. As a proximate result thereof, Plaintiff has suffered extreme emotional injury and distress, along with such other additional damages as may be proven at trial.

22. Additionally, said Defendants' actions were malicious, reckless, and lacking any reasonable basis whatsoever, thus warranting the imposition of punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendants (excepting RivKia) in such amount of compensatory and punitive damages as may be awarded by the trier of fact.

COUNT FOUR – FAIR CREDIT REPORTING ACT

23. Plaintiff realleges and adopts by reference all prior allegations of the Complaint, as if set forth fully herein.

24. This claim is brought against GMAC under section 1681s-2(b) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq.

25. GMAC is a "furnisher" of credit information under FCRA, and Plaintiff is a "consumer" under same.

26. Plaintiff, on or about January 20, 2011, became aware that GMAC was reporting an active credit delinquency and debt of over $5,000

to the credit reporting agencies concerning the transaction in issue. In response to same, Plaintiff submitted a dispute concerning the reporting to Equifax, stating that the car had been purchased off of lease and that no payment was owing. Equifax then transmitted the dispute to GMAC.

27. On February 9, 2011, Equifax informed Plaintiff that GMAC had verified the adverse credit reporting on the account and would refuse to change the same.

28. GMAC willfully failed to conduct a reasonable investigation of Plaintiff's dispute, the plain result of which would have been to recognize that GMAC has no legitimate debt and that GMAC therefore has no basis upon which to report an active and current delinquency.

29. Based on the foregoing, Plaintiff is entitled to recover statutory damages, actual damages, and attorneys' fees and costs under 15 U.S.C. § 1681n and § 1681o.

WHEREFORE, Plaintiff demands judgment against GMAC in such amount of damages as may be recoverable under sections 1681n and 1681o, together with interest, costs, and attorneys' fees.

COUNT FIVE – FAIR DEBT COLLECTION PRACTICES ACT

30. Plaintiff realleges and adopts by reference all prior allegations of the Complaint, as if set forth fully herein.

31. This Count is brought against Defendants T&K and Syncom under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq.

32. T&K and Syncom are "debt collectors" under the FDCPA, Plaintiff is a "consumer," and Plaintiff's alleged debt is a "consumer debt."

33. Said Defendants violated section 1692c(a)(2) by continuing to place collection calls to Plaintiff and to send letters to Plaintiff after Plaintiff had notified said Defendants that Plaintiff was represented by an attorney.

34. Syncom violated section 1692e(1), (4), (5), (7) and (10) by falsely representing that the debt was or had become a "federal matter," a communication which was misleading in the sense that no federal court had any jurisdiction over such matter, and because the communication was designed to make an unsophisticated person such as Plaintiff think that a federal crime was involved in the non-payment of the alleged debt.

35. Said Defendants violated section 1692e(2) by misrepresenting that the debt was legitimate when in fact it was not.

36. As a proximate result of said violations, Plaintiff has suffered damages.

WHEREFORE, pursuant to section 1692k, Plaintiff demands judgment against Syncom and T&K in such amount of damages as may be proven, together with interest, costs and attorneys fees.

COUNT SIX -- ALTERNATIVE CLAIMS AGAINST RIVKIA

37. Plaintiff realleges and adopts by reference all prior allegations of the Complaint, as if set forth fully herein.

38. This Count is pleaded against RivKia only.

39. In the event that the debt described in this action is legitimate, Plaintiff asserts the following alternative claims against Defendant RivKia:

a. Defendant RivKia has converted the Cobalt without satisfying the indebtedness owed by Plaintiff in connection with the Cobalt;

b. Defendant RivKia represented that the trade-in of the Cobalt would extinguish the debt associated with the Cobalt; Plaintiff relied on that representation and handed the Cobalt over to RivKia, and in the process allowed RivKia to charge Plaintiff an additional $3,000 on her Kia, which represented the negative equity associated with the Cobalt; and Plaintiff has been damaged as a result of said reliance;

c. Defendant RivKia breached its agreement with Plaintiff to take the Cobalt on trade-in and to satisfy the debt associated with same in the Kia transaction.

WHEREFORE, in the alternative to Counts One – Five, Plaintiff demands judgment against Defendant RivKia in such amount of compensatory and punitive damages as may be proven, together with interest, costs, and such further relief as may be appropriate.

PLAINTIFF DEMANDS TRIAL BY JURY.

/s/ Wilson F. Green
Attorney for Plaintiffs

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SERVE DEFENDANTS BY CERTIFIED MAIL AS FOLLOWS:

ALLY FINANCIAL, INC.
F/K/A GENERAL MOTORS ACCEPTANCE CORPORATION
C/O C T Corporation System
2 NORTH JACKSON ST., SUITE 605
MONTGOMERY, AL 36104

SYNERGETIC COMMUNICATION, INC.
c/o C T Corporation System
50 N. St. Paul St., Ste. 2900
Dallas, TX 75201-4234

TATE & KIRLIN ASSOCIATES, INC.
c/o Harold Tate
2810 Southampton Road
Philadelphia PA 19154

RIVERCHASE KIA
2200 Pelham Parkway
Pelham, AL 35124